NO. 11594

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

THE ATTORNEY GENERAL OF THE UNITED STATES, *Appellant*,

vs.

WILLIAM WADE RICKETTS, *Appellee*.

On Appeal From the District Court of the United States for the Eastern District of Washington Northern Division

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REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

RE. APPELLEE'S STATEMENT OF FACTS

A brief but accurate statement of the facts of this case can be gathered both from the appellant and appellee's brief already on file herein. Appellee, in his brief (p. 1), points out that he expressed his intent to claim his natural right to American citizenship about the time he became twenty-one years of age. This testimony was given by an uncle, Marion

Ricketts. (R. 82.) He stated that Ricketts made this declaration in 1920. (R. 82.) Appellee was then nineteen years of age and the trial judge admitted this testimony, stating that it might have some probative value as indicating what his intention may have been afterwards. (R. 83.)

There are no records available of appellee's visits or entry into the United States prior to 1936. The only evidence is the appellee's statement to the effect of his earlier entries in hearings conducted by the Immigration Department. As the trial judge pointed out he only remained in the United States eleven months during the first thirteen years after becoming twenty-one years of age. (R. 239). The appellee was under no compulsion, according to his theory of the case, from the Immigration Service but was a free agent as he had not even contacted the Immigration Service before 1936 as far as any records are concerned. Nevertheless, he voluntarily remained out of the United States for this length of time.

The claim is made by the appellee that he did not take the oath of allegiance to any country other than the United States, but on the contrary claimed that he owed his allegiance to the United States. (Br. 4.)

In only one place in the record (p. 82) does it appear that he ever claimed to be an American citizen and that claim was made to his uncle in Canada during minority. He did not at any later time make any declaration or claim to anyone in the United States that he was a citizen, until this case was pending, or

exercise any rights of citizenship here in the United States with the single possible exception that he did vote in the municipal election at Twisp. On the other hand, his voting record in Canada is fairly complete with the additional fact that he held public office there. Although it is not shown that he took any oath of allegiance to Canada or to Great Britain certainly in order to vote he had to declare himself to be a British subject and, in order to hold office in Canada, he must declare himself to support the laws in Canada in the same manner as one qualifying for public office in the United States must take an oath that he will support the laws and constitution of the United States.

ANSWER TO APPELLEE'S ARGUMENT

Appellant agrees with the appellee's statement that mere residence of a United States citizen abroad, however long, would not work a loss of citizenship. The case of *Leong Kuai Yin* v. *United States* (C. C. A. 9) 31 F (2d) 738, cited by appellee, is not applicable to the facts in this case because in that case Yin merely remained in China three years after reaching his twenty-first birthday, but did not hold office or vote there.

It is also conceded that a minor cannot lose his citizenship during minority by serving in the army of a foreign nation. Acts committed during minority by a minor are not binding on him except, as Judge Driver pointed out, they help to explain later conduct.

The case of *Ex Parte Griffin* (N. Y. 1916) 237 Fed. 445, cited by appellee (Br. 8) holds that a citizen of the United States who moved to Canada with his family and there took the oath to defend the king and entered the army voluntarily released his American citizenship and became a British subject.

The case of *In re Reid*, 6 Fed. Supp. 800, 73 F (2d) 153, cited by appellee, was a similar case in which the girl was held to be an American citizen. In that case the petitioner was born at Newport, Iowa, in 1901, of native parents, who went to Canada with her in 1904. The parents there acquired a Canadian homestead. Her father became a British subject in 1907 in order to acquire a patent or title to the homestead. The daughter took no other steps toward becoming a British subject. She entered the United States in 1933 and was declared to be an American citizen. The facts in this case are altogether different from the facts in the Reid case, in that no affirmative action was taken by the petitioner toward becoming a British subject.

The case of *LaMoreaux* v. *Ellis* (Mich. 1891) 50 N. W. 812, cited by appellee (Br. 9) is not applicable here. That case was a quo warranto proceeding to test the title to a public office. The evidence on both sides was declared to be hearsay and the action was dismissed because the person seeking the office could show no title to it. It cannot be seen how the LaMoreaux case is even similar to the issues involved in this case.

The case of *United States* v. *Yasui* (Ore. 1942), 48 Fed. Supp. 40 (Br. 9), was a criminal curfew violation case. The defendant was born in the United States of alien Japanese parents. In that case the court laid down the principle that, by virtue of his birth within the territorial limits of the United States, upon his majority he should decide whether he would elect Japanese or American citizenship. The court further held that the attitude of the defendant is a mental act which can be ascertained as criminal intent is ascertained. In that case the court held that his acts indicated that he was not an American citizen.

The cases of *State* v. *Jackson*, 65 A. 657 (Vt. 1907), and *Riley* v. *Hawes*, 24 F. (2d) 686, hold that removal to Canada during minority of an American citizen does not divest him of such citizenship, but that it can only be lost by voluntary acts subsequent to obtaining the age of majority, also, that the burden of proof was on the United States in expatriation cases. With this principle the appellant has no quarrel, since the Attorney General is the plaintiff in the case and plaintiff must assume the burden of proof.

Under the Nationality Act of 1940, Title 8, USCA, Section 801, the right was extended to persons for two years who *had not theretofore expatriated themselves under then existing law by their own voluntary acts, to return to the United States and take up permanent residence therein.*

The whole difference between appellant and appellee's theory in this case is that appellant contends the appellee had, prior to coming to the United States in 1936, expatriated himself by his own voluntary acts, deeds and conduct in Canada to such an extent that he could not then claim to be an American citizen. This contention has been thoroughly discussed in appellant's opening brief and will not again be argued here.

THE WEIGHT OF THE COURT'S FINDINGS ON CONFLICTING EVIDENCE

Appellee contends that it is a well established principle of law that the trial court's findings will not be disturbed by the appellate court where they are reasonably supported by or sustained by some substantial, credible, and competent evidence. 3 Am. Jur., (Appeal & Error) Sec. 901, p. 469-70. The appellant is in accord with this expression of law and wishes to emphasize that the trial court first rendered an opinion in favor of the appellant. (R. 227) In this opinion the evidence is carefully analyzed and resolved in favor of the appellant on a carefully analyzed factual discussion of the testimony in which it is pointed out by the trial court that the appellant's actions and conduct over a period of years in Canada would expatriate him and make him a British subject.

The court later, after a motion for a new trial, reversed itself and decided the case entirely on the committee report, based upon the hearings on the

workability and application of the Nationality Act of 1940. (R. 345). In this opinion the court made perfectly clear that the former opinion was being set aside on the basis of his interpretation of the committee report alone upon the intent and the meaning of the act and not on the basis of the testimony of witnesses and the evidence introduced at the trial of the case.

Under these circumstances, the full weight and credit of the court's analysis and witnesses and circumstances deducible therefrom must be resolved in favor of the appellant. The court says:

> "I might say this, that the court hasn't changed its view of the facts in this case, and I propose to sign findings which show simply the bare facts of his having been born here, having been taken to Canada, the time he returned, and the length of time he has lived here, and then I would of course omit the conclusions as to the effect of that residence in the present findings. I think in one of them there is a finding there that he isn't a resident of this district. I would change that, of course, and find that he is a resident of the district, and then conclude that he is a national of the United States and entitled to the relief sought. I am basing that, of course, upon the second proviso of this Act. It may be that the Circuit Court of Appeals will take the view that under the facts he has expatriated himself regardless of the statute, but that will be in your record and my findings wouldn't change that one way or the other. Do you understand what the court has in mind?"

As against the appellee's present contention that he at no time, by act, conduct or deed, while in

Canada, voluntarily relinquished his American citizenship, we have many bits of evidence to the contrary. These consist of questionaires filled out by the appellee and statements given by him while under oath before proper officers of the United States Immigration and Naturalization Service who conducted hearings in his case. A typical example is Defendant's Exhibit 17. (R. 317) Ricketts testified at that hearing that when he became of age it was his intention to remain in Canada indefinitely and assume the rights and privileges of Canadian citizenship. Also, he stated that he had always considered himself a Canadian citizen and had never made any claim to United States citizenship. (R. 322) He further testified (R. 321) that, when he entered the United States at Eastport in 1926, he was admitted as a Canadian citizen and made no claim to United States citizenship. It will thus be seen that, at the time Ricketts was given this hearing on the deportation proceedings on August 2, 1943, he made no claim that he was under duress, compulsion or suggestion by the United States immigration authorities and stated unequivocally at that time that he was a Canadian citizen.

Ricketts further testified that he was a registered voter when he voted in the provincial election in Canada in 1927, and that when he attempted to vote in 1930 he was not permitted to do so because he was out of his home constituency when he registered. (R. 317)

Ricketts registered under the provisions of the Selective Service and Training Act in the United States. His selective service questionaire appears as Defendant's Exhibit No. 1 (R. 32), wherein he stated that he was not a citizen of the United States, but was last a citizen of Canada. Certainly his argument fails that he was under the compulsion of the Immigration Service when he registered in the United States as a Canadian. The Immigration Service had nothing whatever to do with his registration. He was dealing with an independent agency of the United States government and had no hesitation in claiming to be an alien when he registered on May 7, 1942.

CONCLUSION

In conclusion it should be pointed out that the United States Supreme Court, in *Perkins* v. *Elg*, 83 L. Ed. 1320, 307 U. S. 325, provides three ways in which citizenship at birth can be lost. The court stated:

> "United States citizenship at birth is deemed to continue unless one is deprived of it through the operation of a treaty, by Congressional enactment, or by voluntary action in conformity with applicable legal principles."

It is submitted that appellee comes under the last section, having lost his American citizenship by voluntary action. Having once made his election of British citizenship, he could not make a subsequent election under the Nationality Act of 1940, because that act only applies to one who has not already expatriated

himself by his own voluntary act. It is submitted that the acts and conduct of the appellee, at least until May 7, 1942, when he registered as a Canadian alien before the draft board in Spokane, indicated beyond any doubt that in war time he accepted fully the benefits of Canadian citizenship and, when coupled with his activities in Canada, show beyond any doubt that he had already expatriated himself long before the Nationality Act of 1940 took effect and so did not maintain his dual citizenship so that he could take or accept any benefits under the Nationality Act of 1940.

Respectfully submitted,

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